IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 889 OF 2002

Sonu Balu Nimbekar ..Petitioner

versus

The Tahsildar, Nasik
& Anr. ..Respondents

Mr. M. S. Mohite for the Petitioner.

Mrs. A. S. Pai APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
V. K. TAHILRAMANI,JJ.
DATE : 14TH MARCH, 2006

P.C. :

1. Heard counsel for the petitioner and the learned APP.

2. Prayer in the petition is for quashing and setting aside the search and seizure of samples taken by Tahsildar, Nashik, from the petitioner's petrol pump. The search was carried out at the petrol pump of the petitioner under Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order,

1998. Rule 4 is regarding Power of Search and Seizure. It states as under:

. " **Any Gazetted Officer of the Central or State Government or any Police Officer not below the rank of Deputy Superintendent of Police (DSP) duly authorised, by general or special order by the Central Government or State Government as the case may be ....."** shall have different powers of search and seizure, as given in this Rule.

3. The only question that is raised by the petitioner is that the Tahsildar - Respondent No.1 who carried out the search and took samples was not authorised officially by general and special Order of the State Government or the Central Government. The State has filed affidavit of one Raghunath K. Ghode, Tahsildar, Nasik. Along with the Affidavit, the Tahsildar has annexed a copy of the G.R. dated 29.3.1995 by which Tahsildar is declared as Class - I Gazetted Officer and copy of the concerned Order of 1998, as quoted above, is also annexed. G.R. that is so relied upon is dated 29.3.1995 may be to equate the Tahsildar as Class - I officer but there is nothing on record to show that when the Tahsildar

- Respondent No.1 carried out search and seizure he was an Officer duly authorised under the aforesaid Order of 1998.

3. Sufficient time was given, by us, to the learned APP to find out whether there is any authorisation in this regard under Rule 4 of the said Order, she has not been able to do so. Therefore, there is nothing to substantiate the contention of the respondents that Tahsildar was an Authorised officer.

4. In the result, the petition has to be allowed. We order that the search and seizure of the samples by the respondent No.1 from the petitioner's petrol pump i.e. M/s. Trimbakeshwar Petroleum on 25.2.2001, is illegal, it is set aside. Consequently, no action can be taken against the petitioner on the basis of the said search or the samples taken at that time. There is no order as to costs. Rule made absolute in the aforesaid terms.

(D.G. DESHPANDE, J.)

(V.K. TAHILRAMANI, J.)